S.B. CIVIL WRIT PETITION NO.5522/2003
[Rang Lal Meena Vs. The Central Co-operative Bank Ltd. Bhilwara and others)

Date of Order :: 13th November 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.A.K.Rajvanshy for the petitioner
Mr.Rajesh Joshi)
Mr.Manoj Bohra) for the respondents Nos. 1 to 3

…

BY THE COURT:

The petitioner, then working as Branch Manager with the respondent No.1, the Central Co-operative Bank Ltd., Bhilwara (hereinafter referred to as 'the Bank'/'the respondent-Bank') having been penalised after Departmental Enquiry with reversion to the post of Clerk (Banking Assistant) by the order made by the Disciplinary Authority on 23.03.2002 (Annex.7); and his appeal having been dismissed by the Appellate Authority on 01.08.2003 (Annex.11), preferred an appeal before the Registrar, Co-operative Societies that came to be rejected as incompetent by the order dated 01.09.2003 (Annex.13). The petitioner has assailed the orders aforesaid by way of this petition for writ.

Briefly put, the facts relevant for determination of the questions involved in the present petition are that the

petitioner, while working as Branch Manager at Mahuwa Branch of the respondent-Bank was put under suspension by the order dated 26.05.2001 (Annex.1) and then, was served with a charge sheet for proceedings under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 on 14.09.2001 (Annex.3) alleging his misconduct in the following terms:-

> " (1) अनाधिकृत रूप से ऋण स्वीकृत कर अनुशासन भंग किया
> (2) बैंक की ऋण नीति के विरूद्ध ऋण स्वीकृत कर बैंक की राशि को संदिग्ध बना दिया एवं वित्तीय अनुशासन भंग किया है"

In relation to charge No.1, it was alleged that though, after finding irregularities while the petitioner was posted at Hamirgarh Branch of the Bank, by an order dated 24.08.1999 disbursement/sanctioning of any loan was prohibited until further orders yet, at Mahuwa Branch of the Bank, the petitioner proceeded to disburse loans upto Rs.25,000/-; and the Bank commanded the petitioner again by its letter dated 26.05.2000 (Annex.14) that the earlier restraint order issued while he was working at Hamirgarh Branch was still in operation; and his powers to sanction loan upto Rs.25,000/- stood seized until further orders; and he was called upon to transmit the original files in relation to the loans disbursed by him. It was alleged that the petitioner failed to send such files

and, this apart, despite seizure of his powers, the petitioner proceeded to advance loans to 11 named firms on different dates between 19.10.2000 to 19.05.2001. In relation to charge No.2 for sanctioning of loans against the policy of the Bank and putting the amount of the Bank in doubts and for breach of financial discipline, it was alleged that several of the loanees were situated outside the area of the Branch concerned; that in majority of cases cash credit limit was sanctioned for three years though ordinarily such limit ought to have been sanctioned only for one year; that the petitioner failed to obtain adequate and lawful security towards the amount of loan; that the loanees were required to submit monthly stock statements but the petitioner permitted drawing of loans without stocks statements; and that several of the stock statements related to fixed assets that were not relevant for cash credit limit.

The petitioner submitted a reply to the allegations so made and stated, inter alia, that subsequent to the letter dated 26.05.2000 (Annex.14), the Managing Director of the Bank by his letter dated 05.09.2000 (Annex.16) expressed concern that the Branch was not making progress towards achievement of the annual target of disbursement of loan to the tune of Rs.13 lacs; and the petitioner was called upon to take steps for maintaining progress with the warning that any laxity in taking proper steps for achieving targets shall be

taken otherwise and necessary proceedings shall be adopted. The petitioner pointed out that the loans referred to in the memorandum of allegations were all disbursed prior to another letter dated 24.05.2001 issued by the Managing Director; and maintained that he had always obeyed the instructions and has not committed any irregularity or indiscipline. In relation to the question about the area of operation of the Branch, the petitioner stated that the Bank had three Branches within the area of Panchayat Samiti, Mandalgarh; and extending of loan within Panchayat Samiti area was neither improper nor beyond jurisdiction and such was an established practice that cannot be considered as breach of financial discipline. The petitioner further maintained that the Bank having not fixed any term-period, sanctioning of cash credit limit for three years cannot be of financial indiscipline. The petitioner asserted that he had taken adequate security in relation to all the loans advanced and during his tenure, all the loanees had supplied monthly statements; and remarked that the very assertion in the charge sheet about his obtaining monthly statements from the loanees indicated contradiction in the particulars of charges.

The Executive Officer of the Bank was appointed as Inquiry Officer who proceeded to submit his inquiry report that was served upon the petitioner with the letter dated 28.02.2002 (Annex.5). In relation to charge No.1, the gist of

rival contentions finds mention in the inquiry report in the following passage:-

> " आरोपित कर्मचारी ने अपने लिखित प्रत्युत्तर में यह अंकित किया है कि बैंक ने अर्द्धशासकीय पत्र 8026 लिखा जिसकी छाया प्रति उक्त प्रत्युत्तर के साथ संलग्न की। जिसमें लिखा है कि श्री मीणा द्वारा 13.00 लाख के फसली ऋण के अतिरिक्त लक्ष्यों की पूर्ति नहीं कर जा रही है अत: मैंने बैंक के पत्रों की पालना की है इस सम्बन्ध में बैंक प्रस्तुतकर्ता द्वारा प्रस्तुत लिखित प्रत्युत्तर का अवलोकन किया गया जिसमें उन्होंने लिखा है कि आरोपित कर्मचारी द्वारा यह लिखा जाना पूर्ण रूप से मिथ्या एवं भ्रमात्मक है कि उन्होंने बैंक के नियमानुसार ऋण किया गया है एवं आरोपित कर्मचारी बैंक के प्रबन्धक निदेशक जी के अ.शा. पत्र का सहारा लेकर अपने द्वारा किये गये गलत एवं अनुचित कार्यो के दोष से बचने का प्रयास किया है जबकि श्री मीणा पर पूर्णतया ऋण वितरण एवं स्वीकृति के अधिकारों पर रोक थी। इस बाबत आरोपित कर्मचारी को पक्ष रखने हेतु कहा किन्तु मीणा ने इसका कोई प्रत्युत्तर नहीं दिया।"

The Inquiry Officer, however, recorded the following as finding in relation to charge No.1:-

> " आरोप पत्र में वर्णित सभी फर्मो/ ऋणियों को ऋण वितरण/ स्वीकृति बैंक प्रधान कार्यालय के आदेश क्रमांक 3799 दिनांक 26.5.2000 के पश्चात् वितरित किये गये है जबकि उक्त आदेशों से श्री रंगलाल मीणा -आरोपित कर्मचारी के उपभोक्ता ऋण/ 25000/- रूपये तक के अन्य उद्धेश्य/ शाखा व्यवस्थापकों को 25000/ रूपये तक के ऋण स्वीकृत की पावर अग्रिम आदेशों तक सीज की गई है। अत: आरोप संख्या -1(एक) आरोपित कर्मचारी पर पूर्णतया सिद्ध प्रमाणित होता है।"

In relation to charge No.2, though there had been certain allegations against the petitioner of extending loan to the borrowers situated outside the area of operation of the Branch, about want of adequate security, and about extending

loans beyond permissible period etc., the Inquiry Officer found that no such “loan policy” of the Bank was produced on record; and there was no documentary evidence to show as to in what manner and after what proceedings the loans were to be disbursed/sanctioned. However, the Inquiry Officer observed that charge No.2 was partially proved against the delinquent. The finding on charge No.2 reads as under :-

> " आरोप संख्या 2 में " अ" से "य" तक जारी किये गये है। स्व: स्पष्ट नहीं है बैंक की ऋण नीति के विरूद्ध ऋण स्वीकृत कर बैंक की राशि को संदिग्ध बना दिया जाने के सम्बन्ध में वक्त जांच बैंक ऋण नीति प्रस्तुत नहीं हुई। एवं शाखा व्यवस्थापकों को 25000/- रूपये तक के ऋण स्वीकृत वितरित किये जाने से सम्बंधित " ऋण पालिसी" योजना" किस प्रारूप में लागू की गई एवं क्या नीति निर्धारण, कार्यक्षेत्र, एवं क्या कार्यवाही पूर्ण कर ऋण वितरण/ स्वीकृत किया जाना था इस सम्बन्ध में कोई दस्तावेज प्रस्तुत नहीं हुये।
>
> चूंकि आरोपित कर्मचारी पर पत्रांक 3799 दिनांक 26.5.2000 से ऋण स्वीकृत (25000) तक के पावर सीज के तदुपरान्त भी ऋण वितरण किया जाना नियम विरूद्ध रहा है एवं ऋण वितरण एवं स्वीकृत किया गया है उसमे गम्भीर कमियां एवं बैंक द्वारा जारी पत्र, परिपत्रों की अवहेलना की गई है। आरोप संख्या 2 आरोपित कर्मचारी पर आंशिक रूप से सिद्ध पाया जाता है।"

The Inquiry Officer also made a comment that one Khushbu Kirana and General Store was found to have been disbursed loan by Mandalgarh Branch and so also by Mahuwa Branch and hence, such borrower was required to be dealt with sternly by the Bank.

Called upon to make submissions after such inquiry report, the petitioner reiterated his stand with reference to the letter dated 05.09.2000 (Annex.16) whereby he was asked to

take proceedings for achieving the targets of loan disbursement and else was threatened with disciplinary proceedings and submitted that he had disbursed the loans only thereafter; and further maintained that all the loans were sanctioned before receipt of the letter dated 24.05.2001 (Annex.17) stating that prohibition upon him against disbursement of non-agricultural loan continued to remain in force. The petitioner reiterated his stand in relation to charge No.2 too, as noticed hereinbefore.

Thereafter, the Managing Director of the Bank (the Disciplinary Authority) proceeded to pass the impugned order on 23.03.2002 (Annex.7). After reciting the allegations against the petitioner and a part of the report of the Inquiry Officer, the Managing Director concluded that the charges against the petitioner stood proved and proceeded to impose the penalty of reversion of the petitioner from the post of Branch Manager to the post of a Clerk and denying him of any other benefit during the suspension period except subsistence allowance.

It may be pointed out that against the aforesaid order dated 23.03.2002 (Annex.7) the petitioner earlier preferred a revision petition before the Co-operative Minister who initially stayed the operation of the impugned order but then rejected the revision petition as incompetent by the order dated 17.04.2003 (Annex.9).

The petitioner thereafter preferred an appeal before the Administrator of the respondent-Bank (the Collector) and more or less raised the same contentions as already noticed above; and the Administrator proceeded to decide the appeal filed by the petitioner by the impugned order dated 01.08.2003 (Annex.11). The learned Appellate Authority, after reciting the allegations against the petitioner observed that the Disciplinary Authority had passed the impugned order dated 23.03.2002 while stating all the facts substantiating the charges; and the appellant (the petitioner) has not taken any stand or ground in the appeal in relation to sanctioning of loans to the persons outside the area of operation that *ipso facto* established that he was unable to state any justification towards such serious irregularity. The Appellate Authority then considered the contention of the petitioner with reference to the D.O. letter dated 05.09.2000 (Annexure-16) that he had sanctioned loans only after receipt of such letter; and rejected such contention with the observations that it was not made out if the powers seized by the earlier letter dated 26.05.2000 were restored by the said D.O. letter dated 05.09.2000. The learned Appellate Authority further observed that seizure of the powers did not mean that no loan could have been sanctioned from the Branch concerned; and it was required of the appellant to have sent the loan proposals for sanction to the Head Office

but the appellant himself proceeded to sanction the loans to the said 11 firms in spite of prohibition and that amounted to serious indiscipline. The learned Administrator, therefore, proceeded to reject the appeal and to maintain the order passed against the petitioner.

As noticed at the outset, the petitioner filed an appeal against the order so passed by the Administrator before the Registrar, Co-operative Societies that came to be rejected as not maintainable by the order dated 01.09.2003 (Annex.13). Aggrieved, the petitioner has preferred this writ petition.

It has been strenuously contended by the learned counsel for the petitioner with reference to the D.O. letter dated 05.09.2000 (Annex.16) that in the face of such communication, the petitioner was under compulsion to proceed with disbursement of loan for the purpose of achieving the targets and if he would not have done so, the Department would have hauled him up for not achieving the targets; that the learned authorities have acted wholly illegally in not considering the predicament of the petitioner where he had no option but to proceed with loan disbursement in view of such communication from the Managing Director; and that the authorities have failed to consider that otherwise the petitioner did not sanction any loan during the period the Managing Director had seized his powers. Learned counsel, thus,

contended that charge No.1 as levelled against the petitioner was entirely unjustified. Learned counsel further contended that charge No.2 has been vague and uncertain and nothing has been specifically pointed out as to how any particular loan was against which particular Bank Policy; and that no loan disbursed by the petitioner fell in any controversy until he remained posted at Mahuwa Branch. Learned counsel urged that in view of different and contradictory orders issued to the petitioner and then, in view of vague and uncertain charges, the proceedings deserve to be quashed. Learned counsel further contended that in any case, the penalty of reversion to the post of Clerk (Banking Assistant) remains too harsh and grossly disproportionate to the misconduct alleged. Learned counsel appearing for the respondent-Bank, on the other hand, has supported the orders impugned with the submissions that the acts and deeds of the petitioner had been of gross indiscipline, of non-compliance of the orders issued by the competent authorities, and of several financial irregularities. Learned counsel submitted that for there being no infirmity in the inquiry proceedings, the orders impugned call for no interference in this petition.

Having examined the material placed on record and having given a thoughtful consideration to the entire matter, this Court is of opinion that the impugned orders passed by the

Disciplinary Authority and by the Appellate Authority suffer from fundamental errors apparent on the face of record in relation to charge No. 1 that cannot be sustained at all; and the matter deserves to be remitted to the Appellate Authority for reconsideration of the appeal in relation to charge No. 2.

So far charge No.1 is concerned, this Court is constrained to observe that the respondents had been absolutely unfair in framing such a charge against the petitioner and then proceeding with the same and even holding the petitioner guilty therefor. As noticed, the substratum of charge No.1 against the petitioner had been that his powers to sanction/disburse loan were seized by the order dated 24.08.1999 even while he was working at Hamirgarh Branch and that such prohibition was reiterated on 26.05.2000 and yet the petitioner proceeded to sanction/advance the loans in question. There had been another cursory suggestion in the particulars of this charge that the petitioner did not send the original files of the loans sanctioned before issuance of the order dated 26.05.2000. However, in relation to this second limb of charge, of his having not sent the concerned case files of the loans sanctioned before 26.05.2000, no particulars are available on record and such allegation has not been the reason or basis of findings by the authorities concerned. So far the alleged unauthorised acts of sanctioning/disbursing loans

in contravention of seizure/restraint orders are concerned, the charge and its dealings by the respondents could only be said to be beyond reasonableness, and rather reaching the brink of absurdity.

In response to such charge that he sanctioned loans despite restraint orders, right from beginning the petitioner had been crying aloud that he did so only after receiving the D.O. letter dated 05.09.2000 from the Managing Director of the Bank (the Disciplinary Authority); and that by the said D.O. letter dated 05.09.2000 it was complained of that the Branch of the Bank managed by the petitioner was not making adequate progress in achieving the targets of disbursement of loan and he was threatened with disciplinary proceedings in case of laxity in achieving the targets.

The Inquiry Officer chose not to state a single word in his finding on charge No. 1 on such specific assertion of the petitioner that he sanctioned the loans only after receiving the said D.O. letter dated 05.09.2000 from the Managing Director. The Disciplinary Authority i.e., the Managing Director, though was reminded of such letter, even while passing the impugned order dated 23.03.2002 (Annex.7), chose not to deal at all with such fundamental and crucial contention of the petitioner. The learned Appellate Authority appears to have realised the relevance of, and substance in, such submission of the

petitioner that was hitting at the very bottom of charge No.1; but then, has attempted to come out with an entirely new theory that has neither any basis nor was suggested in memorandum of allegations nor was even in contemplation of the Presenting Officer of the Bank or the Inquiry Officer or even the Disciplinary Authority.

The learned Appellate Authority observed that it could not be accepted that by the letter dated 05.09.2000 the seized powers of the petitioner were restored; but, according to the Appellate Authority, seizure of the powers did not mean that no loan could have been sanctioned from the Branch concerned; and that from the targets stated to the Branches of the Bank, it was clear that loan business of the Bank was intended to be expanded for the benefit of the Bank and so also for the loan facility to the persons within the area of the Branch. With such observations, the learned Appellate Authority came out with the theory that the appellant (the petitioner) ought to have forwarded the loan proposals to the Head Office for sanction! The Appellate Authority, thus, concluded that sanctioning of the loan by the appellant himself in spite of restraint orders was of serious indiscipline. This Court is rather surprised at the attempt on the part of the Appellate Authority to justify an entirely baseless charge framed against the petitioner on the basis of such an ill-

conceived and twisted proposition that has no foundation on record.

It shall be apposite to refer to the relevant communications in relation to the allegations made against the petitioner. It had been the case of the Bank that the powers of the petitioner to sanction/disburse loan were seized even while he was posted as Manager of Hamirgarh Branch. The respondents have placed on record such order made in relation to the Hamirgarh Branch as Annex.R/1 that reads thus:

> "शाखा हमीरगढ़ में वितरित उपभोक्ता ऋणों में गम्भीर अनियमितता पाई जाने से अग्रिम आदेशों तक ऋण वितरण/ स्वीकृत पर रोक लगाई जाती है।"

It is difficult to make out from the said order if it were of seizure of powers of the petitioner until further orders because the order had specifically been issued prohibiting disbursement of loan by Hamirgarh Branch. Be that as it may, indisputably, the petitioner was served with the order dated 26.05.2000 (Annex.14) while working as Branch Manager at Mahuwa Branch stating that he had committed irregularities in disbursement of loan as Branch Manager, Hamirgarh and further disbursement of loan at Hamirgarh Branch was stayed; and that such restraint order was operative upon him yet; and it was ordained that at Mahuwa Branch also, his powers to

sanction loan upto Rs.25,000/- are seized. The letter dated 26.05.2000 (Annex.14) reads thus:

> " उपरोक्त विषयान्तर्गत लेख है कि आप शाखा व्यवस्थापक शाखा-हमीरगढ़ में कार्यरत थे तब आप द्वारा वितरित उपभोक्ता ऋण वितरण में गम्भीर अनियमितताऐं की गई थी जिसके कारण हमीरगढ़ शाखा में उपभोक्ता ऋण वितरण पर रोक लगा दी गई थी। जो आप पर अभी भी लागू है अत: आपको निर्देशित किया जाता है कि आप शाखा महुआ में भी उपभोक्ता ऋण/ शाखा व्यवस्थापकों को 25000/- रूपये तक के ऋण स्वीकृत की पावर आपकी अग्रिम आदेशों तक सीज की जाती है।
>
> साथ ही यदि आप द्वारा शाखा महुआ में उपभोक्ता ऋण/ 25000/- रू. तक के अन्य उद्धेश्य हेतु यदि ऋण वितरण किये गये हो तो उन सभी की मूल पत्रावलियां तीन दिवस में इस कार्यालय को प्रस्तुत करें।"

The petitioner has stated that in response to said letter dated 26.05.2000 (Annex.14), he pointed out by the letter dated 15.06.2000 (Annex.15) that with such seizure of powers, it would not be possible to achieve the targets but he would not sanction any loan in future and pointed out that as against the targets of Rs.8 lacs disbursement, he had been able to achieve the targets only upto Rs.1.70 lacs. Then came the D.O. letter dated 05.09.2000 (Annex.16) from the Managing Director of the Bank (the Disciplinary Authority) and the same reads thus:

> " प्रिय श्री मीणा
>
> मैं आपका ध्यान इस कार्यालय के पत्र दिनांक 21.08.2000 के ओर आकर्षित करना चाहूंगा जिसमें शाखाओं को वर्ष 2000-2001 के आवंटित उद्धेश्यवार वार्षिक लक्ष्य की माह जुलाई 2000 तक की समीक्षा की गई। जिसके अनुसार शाखा की प्रगति बहुत ही शोचनीय रही है आलोच्य वर्ष के 5

माह व्यतीत हो चुके है जबकि आपकी शाखा को फसली ऋण के अतिरिक्त आवंटित वार्षिक लक्ष्य 13.00 लाख के है इसके विपरीत जुलाई तक की 0.20 लाख की प्रगति हुई है जो लक्ष्यों का 1.54 % है।

उक्त समीक्षा में यह पाया गया कि आप द्वारा कुछ उद्धेश्यों में तो अभी तक एक भी ऋण पत्रावली तैयार नहीं करवाई गई है जबकि फार्म सेक्टर / डेयरी आदि उद्धेश्य के लिये जुलाई से नवम्बर तक का माह बहुत ही उपयुक्त है इस प्रकार अकृषि क्षेत्र के अन्तर्गत भी प्रगति ज्यादा सन्तोषजनक नहीं कही जा सकती है उक्त समीक्षा/ प्रगति से यह प्रतीत होता है कि आप अपने कार्य के प्रति रूचि नहीं ले रहे है जिसके कारण शाखा को आवंटित वार्षिक लक्ष्यों की प्रगति नहीं हो पा रही है।

अत: मैं यह चाहूंगा कि आप प्रत्येक सप्ताह सोमवार को शाखा को आवंटित सेक्टरवाईज लक्ष्यों की प्रगति की समीक्षा क्षेत्रीय फील्ड स्टाफ के साथ करे एवं ऐसी ऋण नीति बनावें कि आवंटित उद्धेश्यवाईज लक्ष्यों की प्रगति मासिक रूप से संभव हो सके, क्षेत्र की ग्राम सेवा सहकारी समितियां जिनमें ऋण वितरण की सम्भावना हो उन व्यवस्थापकों से भी तालमेल/ समन्वय स्थापित कर शाखा को आवंटित लक्ष्यों की प्राप्ति करना सुनिश्चित करें ताकि शाखा आर्थिक स्थिति से मजबूत होकर लाभ भी प्राप्त कर सके ध्यान रहे कि शाखाओं को आवंटित लक्ष्यों की प्रगति में किसी प्रकार की शिथिलता को अन्यथा लिया जाकर आवश्यक कार्यवाही की जावेगी।"

(The particulars appearing underlined are the words and figures jotted over dotted lines in the letter Annexure-16).

Thereafter, the petitioner was informed by the letter dated 24.05.2001 (Annex.17) that he had disbursed loans despite restraint orders and in that relation separate proceedings were being adopted and it was enjoined upon him not to sanction any loan except to Gram Sewa Sahakari Samities. Thereafter, the present disciplinary proceedings commenced while putting the petitioner under suspension on 26.05.2001.

Reading the letter dated 26.05.2000 (Annex.14) emanating from the Managing Director of the Bank, the D.O. letter dated 05.09.2000 (Annex.16) again emanating from the same Managing Director, and the letter dated 24.05.2001 (Annex.17) yet again from the Managing Director; and noticing that the very allegation against the petitioner had been of sanctioning loans during the period that falls precisely between the dates of the two letters Annex.16 and Annex.17, this Court is unable to find any justification in charge No.1 as levelled against the petitioner; and the propositions as adopted by the respondents authorities are difficult to be appreciated from any stand point.

The petitioner repeatedly asserted that he had to disburse the loans in view of the D.O. letter dated 05.09.2000. Neither the Inquiry Officer nor the Disciplinary Authority had any answer to this specific stand of the petitioner; and maintained a wanton silence on this crucial aspect of the matter. The Appellate Authority, quite conscious of significance of this contention of the petitioner, came out with a new theory that despite seizure of powers, the loans were required to be disbursed and the loan proposals ought to have been sent to the Head Office. It beats imagination to comprehend even the basis of the observations as made by the Appellate Authority. Apart from the fact that such theory

does not find mention in the particulars of allegation served upon the petitioner, none of the letters aforesaid nor anything else on record even remotely indicate if the petitioner was stated the directions that he would not disburse the loan but should send the proposals to the Head Office for sanction. On the other hand, immediately after receiving the letter dated 26.05.2000 (Annex.14) the petitioner pointed out to the Managing Director by his letter dated 15.06.2000 (Annex.15) that with such seizure of powers, the targets would not be achieved. It has not been the case of the Department that at any point of time, anybody, ever, stated to the petitioner that he should send the loan proposals to the Head Office. The proposition carved out by the Appellate Authority only in order to infuse a justification in a wholly baseless charge in itself remains wholly unwarranted apart from being spineless and bereft of any logic.

The significant aspect of the matter remains that if anybody was required to be blamed in this case so far charge No.1 is concerned, it was none other but the Managing Director (the Disciplinary Authority) alone. It is noticed that the D.O. letter dated 05.09.2000 was specifically issued by the Managing Director addressed personally to the petitioner and the figures of targets and deficiency in achieving the targets etc. were all been filled up in handwriting upon dotted lines.

The Managing Director even suggested various methods to be adopted for the purpose of disbursement of loan. It remains undenied and undeniable that the Managing Director did issue such letter to the petitioner. It is not the case of the respondent-Bank that the petitioner disbursed any loan after restraint order dated 26.05.2000 (Annex.14) and before the said D.O. letter dated 05.09.2000 (Annex.16). Indisputably, the petitioner disbursed the questioned loans, forming the basis of charge against him, only after the said D.O. letter dated 05.09.2000 (Annex.16) and before he received the other communication dated 24.05.2001 (Annex.17).

It sounds rather queer that on one hand the Managing Director of the Bank would ask his Branch Manager not to disburse any loan; and four months later would state dissatisfaction to the same Branch Manager for not making progress towards the work of loan disbursement, would even threaten the same Branch Manager with disciplinary proceedings if there be any laxity in making efforts in achieving the targets of loan disbursement, and would also suggest the methods to be employed for achieving the targets of loan disbursement; and then, the same Managing Director as Disciplinary Authority would blame the petitioner for disbursement of loan despite restraint order! If not anything else, the contradictory instructions emanating from the office of

the Managing Director of the Bank stand contrary to the requirements of issuing proper and intelligible commands; and rather show an entirely cursory approach where it appears that such letters like the one dated 05.09.2000 (Annex.16) were issued in a routine manner to all the Branch Managers; and the Managing Director, without even looking into the record, issued the same letter to the petitioner too.

In any case, it was entirely unjustified for the Bank to have charged the petitioner with misconduct as alleged in charge No.1 wherefor the petitioner could not have been blamed at all. Per force it gets reiteration that the stand taken by the petitioner of his having disbursed the loans only after receiving such letter (Annexure-16) from the Managing Director had been so uncomfortable for the Inquiry Officer and so also for the Managing Director that they chose not to say anything in that regard; and simply omitted the same in their findings. The order passed by the Managing Director in relation to charge No.1 suffers from extreme perversity and from errors apparent on the face of record. Then, as noticed, the specious suggestion as put forward by the Appellate Authority stands beyond the record and is not good even for conjectures what to say of legal inference and justification for a finding on misconduct.

The charge No.1 in the present case could not have been levelled against the petitioner at all; and even if levelled, ought to have been dropped.

This Court is clearly of opinion that while the disciplinary proceedings are intended to maintain cleanliness in public administration, it is moreover required of a Disciplinary Authority to be clear in its propositions and to be forthright too. It would have been fair and discreet on the part of Managing Director to have accepted the folly of issuance of contradictory commands from its office and to have gracefully dropped the charge No.1 against the petitioner. It would have been fairer on the part of the Appellate Authority to have dispassionately examined the matter; and instead of attempting to carve out some illogical reasons to support such baseless order passed by Disciplinary Authority, to have annulled charge No.1.

In relation to disciplinary proceedings, this Court in its writ jurisdiction would, ordinarily, refrain from entering into the merits of the charge but at the same time such proceedings by the Department that beat the very basics of logic, reasonableness, and fairness cannot be countenanced. Charge No.1 in this case deserves to be, and is hereby quashed.

So far charge No.2 is concerned, it has different facets as noticed hereinbefore. The Inquiry Officer made a cryptic

comment that such charge was partly proved. However, the Inquiry Officer had very clearly stated that no such policy of the Bank was produced on record that was allegedly violated. The Disciplinary Authority's order in this regard is, again, not a speaking order and is nothing but mere reproduction of various allegations. The Appellate Authority has indicated on one aspect of this charge No.2 to support the order made against the petitioner. According to the Appellate Authority, the petitioner had not replied to the allegations that he sanctioned the loan to the firms outside the area of operation of the Branch. However, this allegation itself remains vague and uncertain. It is not clear as to what is meant by the expression ‘area of operation’ of Branch and it is also not clear as to which particular policy stood violated thereby? It does not appear from the haphazard allegations made against the petitioner that he extended loan to any fake entities or there had been any such substantial illegality that reflects adversely on the financial health of the Bank. However, for the order passed by the Appellate Authority being laconic in this regard, this Court is of opinion that the Appellate Authority should re-examine the matter and to decide if at all charge No.2 or any part thereof stands proved against the petitioner; and also to consider if the petitioner deserves to be penalised; and if at all, whether the penalty as imposed could be said to be justified?

As a matter of caution, this Court considers it appropriate to put a comment on record that the Bank was not at all justified in framing charge No.1 against the petitioner; and the Disciplinary Authority was not justified in avoiding the fact relating to its letter that nullifies the said charge; and the Appellate Authority acted beyond all canons of reasonableness while attempting to carve out and suggest a non-existent reason to support the said charge. However, the observations aforesaid are only in relation to the said charge No.1 that has been annulled by this Court. And, for the finding on charge No. 2 being not clear and specific, the matter is being remitted to the Appellate Authority who is trusted with objective and dispassionate consideration of the remaining part of the appeal preferred by the petitioner.

As a result of the aforesaid, this writ petition succeeds to the extent indicated above. While charge No.1 stated against the petitioner stands quashed, the impugned order dated 01.08.2003 (Annex.11) is set aside and the matter stands remitted to the Appellate Authority to examine the record of the case and to take an appropriate decision in relation to charge No.2, after extending an opportunity of hearing to the petitioner; and to pass speaking order keeping in view the

observations made hereinabove. In the circumstances of the case, the parties are left to bear their own costs.

The parties shall appear on 30.11.2007 before the Appellate Authority presently exercising such jurisdiction that shall be expected to decide the appeal within a month therefrom.

(DINESH MAHESHWARI),J.

MK